

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Roanoke Division**

GARY WALL, #1133749

Plaintiff,

v.

CASE NO. 7:17-cv-00385

E. RASNICK, *et al.*,

Defendants.

RESPONSE

COME NOW the Defendants, by counsel, and respond to this Court's order of December 28, 2018 (ECF No. 76). In response to the specific categories of information requested, counsel represents as follows:

1. The Court requested a response as to whether the following operating procedures have been provided to the Plaintiff: "Operating Procedures 420.1, 420.2, 038.1, 030.4, 135.1, 160.2, and 350.2."

a. By discovery response dated May 16, 2018, the Plaintiff was informed that the requested VDOC Operating Procedures—specifically, OP 420.1 (*Use of Force*), 420.2 (*Use of Restraints and Management of Offender Behavior*), 038.1 (*Reporting Serious or Unusual Incidents*), 030.4 (*Special Investigations Unit*), 134.1 (*Standards of Conduct*), and 350.2 (*Training and Development*)—are security-related procedures that are not made available to incarcerated offenders. Defendants further objected to production of those Operating Procedures on the grounds that the Plaintiff's request sought information that was not relevant to his case. Although the Plaintiff requested

VDOC Operating Procedure “160.2, Training and Development” there is no VDOC Operating Procedure numbered 160.2, and, therefore, that OP was not referenced in the response. A copy of the Defendants’ discovery response, detailing the Defendants’ objection to providing the requested operating procedures (but omitting the documents provided), is attached to this response as Exhibit A.

2. The Court requested a response as to whether the Plaintiff had received “[t]he initial intake decision and appeals of Grievances #00428 and #00029.”

- a. By supplementary discovery response dated July 10, 2018, copies of documents corresponding to grievance ROSP-15-REG-0000428 were provided to the Plaintiff. A copy of that discovery letter, and the pertinent documents, are attached to this response as Exhibit B.
- b. By discovery letter dated November 7, 2018, copies of documents corresponding to grievance ROSP-16-REG-00029 were provided to the Plaintiff. A copy of that discovery letter, and the pertinent documents, are attached to this response as Exhibit C.
- c. Defendants are unaware of any other documents relative to these two grievances, that have not already been provided to the Plaintiff.

3. The Court requested a response as to whether the Plaintiff had received “Pages 2 and 4 of the plaintiff’s written statement.”

- a. After contacting the initial investigator who authored the Special Investigation Report, counsel was able to obtain pages 2 and 4 of the Plaintiff's handwritten statement, and those documents have been provided to the Plaintiff.

4. The Court requested a response as to whether the Plaintiff had received "Answers to Interrogatories from T. Large and B. Akers."

- a. The Plaintiff has been provided with unsigned copies of these Defendants' interrogatory responses. Defendant Large and Akers are no longer employed at Red Onion State Prison, and have not been for some period of time. Counsel has current contact information for both Defendants, and she will be meeting with them in person in advance of trial. Counsel will therefore be able to obtain their notarized signatures at that time, and will deliver signed copies of the interrogatories to the Plaintiff prior to trial, so that he will be able to use the signed copies during trial, should he so desire.

Respectfully submitted,

CLARKE, PONTON, FLEMING, BARKSDALE,
HUGHES, MCCOY, CHURCH, FRANKS,
HENSLEY, ROSE, STILL, DEEL, LYALL,
COLLINS, LARGE, HESS, HOLBROOK,
GWINN, TESTERMAN, BRYANT, MULLINS,
ADDINGTON, DOCKERY, AKERS, TAYLOR,
and BISHOP, Defendants.

AND

HICKS and RASNICK, Defendants/Counter-
Plaintiffs.

By: s/ Margaret Hoehl O'Shea
Margaret Hoehl O'Shea, AAG, VSB #66611
Attorney for named Defendants
Criminal Justice & Public Safety Division
Office of the Attorney General
202 North 9th Street
Richmond, Virginia 23219
(804) 225-2206
(804) 786-4239 (Fax)
Email: moshea@oag.state.va.us

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of January, 2019, I electronically filed the foregoing Response to Court Order with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following CM/ECF participants: N/A, and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participant: Gary Wall, #1133749, Red Onion State Prison, P.O. Box 1900, Pound, VA 24279.

By: s/ Margaret Hoehl O'Shea
Margaret Hoehl O'Shea, AAG, VSB #66611
Attorney for Defendants / Counter-Plaintiffs
Criminal Justice & Public Safety Division
Office of the Attorney General
202 North 9th Street
Richmond, Virginia 23219
(804) 225-2206
(804) 786-4239 (Fax)
Email: moshea@oag.state.va.us